



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 31, and 52

[FAR Case 2017-005; Docket No. 2017-0005, Sequence No. 1]

RIN: 9000-AN32

Federal Acquisition Regulation: Whistleblower Protection for Contractor Employees

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement an act to enhance whistleblower protection for contractor employees. The rule would make permanent the protection for disclosure of certain information. It also would clarify that the prohibition on reimbursement for certain legal costs applies to subcontractors, as well as contractors.

DATES: Interested parties should submit comments to the Regulatory Secretariat Division at one of the addresses shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]** to be considered in the formulation of a final rule.

ADDRESSES: Submit comments in response to FAR Case 2017-005 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by entering "FAR Case 2017-005" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Comment Now" that corresponds with "FAR Case 2017-005." Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2017-005" on your attached document.

- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street, NW, 2nd floor, Washington, DC 20405.

Instructions: Please submit comments only and cite "FAR case 2017-005" in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst,

at 202-219-0202. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite "FAR Case 2017-005."

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement an act to enhance whistleblower protection for contractor and grantee employees (Pub. L. 114-261), enacted December 14, 2016. Although the statute addresses both contractor and grantee employees, the FAR only covers contracts and contractors. Grants are covered in title 2 of the Code of Federal Regulations.

This statute amends 41 U.S.C. 4712 to make permanent the pilot program for enhancement of contractor protection from reprisal for sharing certain information. The four-year pilot program was enacted on January 2, 2013, by section 828 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239), with an effective period of four years from the date of enactment (i.e., January 2, 2013, through January 1, 2017). Section 1091(e) of the NDAA for FY 2014 (Pub. L. 113-66) modified the effective period of the pilot program to be four years from the date that is 180 days after the date of enactment (i.e., July 1, 2013, through June 30, 2017). However, the

program did not expire as it became permanent on December 14, 2016, before either of those expiration dates. This program does not apply to DoD, NASA, or the Coast Guard.

This statute also clarifies that the cost principles at 10 U.S.C. 2324(k) and 41 U.S.C. 4304 and 4310 that prohibit reimbursement for certain legal costs apply to costs incurred by a contractor, subcontractor, or personal services contractor. Personal services contractors are contractors. Cost principles generally already apply in the same way to costs incurred by subcontractors as to costs incurred by contractors.

II. Discussion and analysis.

A. Pilot program becomes permanent. This rule proposes to amend the FAR to make permanent the civilian agency contractor pilot program that implements 41 U.S.C. 4712, currently located at FAR 3.908.

- FAR 3.900 is amended to delete: (1) the discussion of 41 U.S.C. 4705, the prior whistleblower statute (which had been implemented at FAR 3.901 through 3.906, but which had been suspended for the duration of the 41 U.S.C. 4712 pilot program), since the successor statute, 41 U.S.C. 4712, has been made permanent; and (2) the sunset date for 41 U.S.C. 4712.
- The FAR 3.908 heading is amended to remove the

designation as a pilot program, and the entire section is relocated to 3.900 through 3.906 as follows:

- 3.908-1 = 3.900 (a)
- 3.908-2 = 3.901 (retains the definition of "authorized official of the Department of Justice")
- 3.908-3 = 3.903
- 3.908-4 = 3.904-1
- 3.908-5 = 3.904-2
- 3.908-6 = 3.905-1
- 3.908-7 = 3.905-2
- 3.908-8 = 3.902
- 3.908-9 = 3.906
- There are a few minor edits in FAR 3.900 (a).
- FAR 3.903 (a) and 3.905-1 are reformatted with vertical lists for improved clarity.
- FAR 3.904-2 is amended to state that the complainant, contractor, and/or subcontractor shall submit their responses to the written report to both the head of the agency and the Office of Inspector General.
- FAR clause 52.203-17, Contractor Employee Whistleblower Rights, is amended to remove the reference to section 828 of the NDAA for FY 2013,

which is no longer necessary since 41 U.S.C. 4712 has been made permanent. The title of the clause is also simplified.

- Agencies will use FAR clause 52.203-17 in contracts for both commercial and noncommercial items that exceed the simplified acquisition threshold. Previously, the requirement to comply with the civilian agency contractor Whistleblower statute was implemented through paragraph (r) of FAR clause 52.212-4, Contract Terms and Conditions-Commercial items.
- The civilian agency contractor whistleblower protections of 41 U.S.C. 4712 listed in paragraph (r) of FAR clause 52.212-4 are removed, because the clause 52.203-17 is now included in FAR clause 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders-Commercial Items.
- Coverage of 10 U.S.C. 2409 will remain in FAR clause 52.212-4(r) to cover DoD, NASA, and the Coast Guard. Only 41 U.S.C. 4712 coverage is being moved to FAR clause 52.212-5.
- FAR clause 52.212-5 is amended to list FAR clause 52.203-17.

- Conforming changes are made to FAR 52.244-6, Subcontracts for Commercial Items.
B. Prohibition on reimbursement for legal costs.
- In order to clarify that the prohibition on reimbursement for certain legal costs applies to subcontractors, as well as contractors, this rule proposes to amend FAR 31.205-47 and 31.603 to add "or subcontract" or "or subcontractor" as appropriate. The term "personal services contract" and "personal services contractor" are not added to the FAR, because they are covered by the terms "contract" and "contractor." Also, the term "or subcontract" is not added at FAR 31.205-47(b)(3)(ii) and (iii), because the Government does not have the authority to rescind, void, or terminate a subcontract.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This proposed rule does not add any new provisions or clauses, nor does it change the applicability of existing provisions or clauses to contracts at or below the SAT and contracts for the acquisition of commercial items, including COTS items. The clause at 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform

Employees of Whistleblower Rights, is not prescribed for use in contracts valued at or below the SAT.

IV. Expected Cost Impact on the Public

FAR subpart 3.9, Whistleblower Protections for Contractor Employees, was added to the FAR on September 19, 1995, to implement sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) codified at 41 U.S.C. 265, recodified as 41 U.S.C. 4705. DoD, GSA, and NASA published an interim rule in the Federal Register at 78 FR 60169 on September 30, 2013 (finalized on December 4, 2015, at 80 FR 75911) to implement a four-year pilot program to enhance the existing whistleblower protections, as required by section 828 of the NDAA for FY 2013, effective through January 1, 2017. This pilot program is inapplicable to DoD, NASA, and the Coast Guard, because these agencies are covered by 10 U.S.C 2409, as amended by section 827 of the NDAA for FY 2013. Using FPDS data for FY 2016, there were about 20,800 new awards over the simplified acquisition threshold in FY 2016 by agencies other than DoD, NASA and the Coast Guard, to approximately 9,100 unique awardees.

This proposed rule would implement Pub. L. 114-261, which makes the pilot program permanent. If Pub. L. 114-261 had not been enacted, the pilot program would have

expired and 41 U.S.C. 4705, as implemented in 1995 at FAR 3.900 - 3.906, would automatically become effective again. Therefore, any impact of this rule is due to the differences between the pilot program authorized by the NDAA for FY 2013, as made permanent, and the prior whistleblower regulations implemented in 1995.

The enhancements to the whistleblower regulations created by the pilot that would be made permanent by this rulemaking do not impose any substantive burden on the public. The rule provides more details about the nature of what constitutes whistleblower information and to whom it may be disclosed, as well as more detailed procedures for filing and investigating complaints and enforcing orders. A clause, applicable above the simplified acquisition threshold, informs the contractor that employees working under the contract are subject to whistleblower protection and requires the contractor to inform its employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections. This requirement can be easily satisfied by issuing an email to all employees working on the contract. For this reason, DoD, GSA, and NASA consider the burden to be de minimis.

The rule would also add the words "or subcontractor" at multiple locations throughout FAR 31.205-47, which also

has no or de minimis impact, because the cost principles generally already apply in the same way to costs incurred by subcontractors as to costs incurred by contractors. FAR 31.000 states that the part contains cost principles and procedures for the pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed (see 15.404-1), and the determination, negotiation, or allowance of costs when required by a contract clause. FAR 31.103 further states that the contracting officer shall incorporate the cost principles and procedures in subpart 31.2 and agency supplements by reference in contracts with commercial organizations as the basis for determining reimbursable costs under cost-reimbursement contracts and cost-reimbursement subcontracts under these contracts performed by commercial organizations. Other sections expand this to contracts and subcontracts thereunder with educational institutions and construction and architect-engineer contracts. FAR 31.204 further addresses the applicability of the cost principles and procedures to subcontracts.

There were a small number of whistleblower cases filed during the pilot period as shown in a U.S. Government Accountability Office (GAO) report. GAO report 17-227, Contractor Whistleblower Protections Pilot Program -

Improvements Needed to Ensure Effective Implementation showed that GAO surveyed 14 departments for reprisal complaints received from July 1, 2013, to December 31, 2015. This report was published and publicly released on March 2, 2017.

The report stated "Of the 127 reprisal complaints submitted by employees of contractors, subcontractors, and grantees under the pilot program, 44 were investigated by the OIG [Office of Inspector General] and none of the investigations completed thus far resulted in findings that substantiated reprisal."

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and

Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This proposed rule is not expected to be subject to E.O. 13771, because this rule has a de minimis impact on the public (see section IV of this preamble).

VII. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601 et seq. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

This proposed rule would implement Public Law 114-261, which was enacted December 14, 2016. The objective of this rule is to enhance whistleblower protection for contractor employees, by making permanent the protection for disclosure of certain information, and ensuring that the prohibition on reimbursement for certain legal costs applies to subcontractors, as well as contractors, as required by Public Law 114-261.

This proposed rule does not make any substantive changes to the pilot program applicable to civilian agencies authorized by the NDAA for FY 2013, other than to make it permanent. The clause is prescribed above the simplified acquisition threshold (SAT). It also does not apply to DoD, NASA, and the Coast Guard, nor to certain elements of the intelligence community. Based on Federal Procurement Data System (FPDS) data for fiscal year (FY) 2016, there were approximately 10,000 new contract awards to small businesses by civilian agencies that exceeded the SAT (about 5,000 unique vendors).

Regarding the amendment to the cost principles, addition of the words "or subcontractor" at multiple locations throughout FAR 31.205-47 has no or de minimis impact, because the cost principles generally already apply in the same way to costs incurred by subcontractors as to

costs incurred by contractors.

There are no reporting, recordkeeping, or other compliance requirements in this rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules. DoD, GSA, and NASA were unable to identify any alternatives to the rule that would reduce the impact on small entities and still meet the requirements of the statute.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2017-005) in correspondence.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 3, 31, and 52

Government procurement.

Dated: December 14, 2018.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR parts 3, 31, and 52 as set forth below:

1. The authority citation for 48 CFR parts 3, 31, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Revise section 3.900 to read as follows:

3.900 Scope of subpart.

This subpart implements various statutory whistleblower programs. This subpart does not implement 10 U.S.C. 2409, which is applicable only to DoD, NASA, and the Coast Guard.

(a) 41 U.S.C. 4712 is implemented in 3.900 through 3.906. These sections do not apply to—

(1) DoD, NASA, and the Coast Guard; or

(2) Any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)). Sections 3.900 through 3.906 do not apply to any disclosure made by an employee of a contractor or subcontractor of an element of the intelligence community if such disclosure—

(i) Relates to an activity of an element of the intelligence community; or

(ii) Was discovered during contract or subcontract services provided to an element of the intelligence community.

(b) Section 743 of Division E, Title VII of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), is implemented in 3.909, which is applicable to all agencies.

(c) Contracts funded by the American Recovery and Reinvestment Act. Section 3.907 of this subpart implements section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) and applies to all contracts funded in whole or in part by that Act.

3. Amend section 3.901 by—

a. Adding in alphabetical order, the definition, “Abuse of authority”;

b. Removing the definition “Authorized official of an agency”; and

c. Revising the definition “Inspector General”.

The added and revised text reads as follows:

3.901 Definitions.

* * * * *

Abuse of authority means an arbitrary and capricious exercise of authority that is inconsistent with the mission of the executive agency concerned or the successful performance of a contract of such agency.

* * * * *

Inspector General means an Inspector General appointed under the Inspector General Act of 1978 and any Inspector General that receives funding from, or has oversight over contracts awarded for, or on behalf of, the executive agency concerned. This definition does not apply to 3.907.

* * * * *

4. Revise section 3.902 to read as follows:

3.902 Classified information.

41 U.S.C. 4712 does not provide any right to disclose classified information not otherwise provided by law.

5. Revise section 3.903 to read as follows:

3.903 Policy.

(a)(1) Contractors and subcontractors are prohibited from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (b) of this section, information that the employee reasonably believes is—

(i) Evidence of gross mismanagement of a Federal contract;

(ii) A gross waste of Federal funds;

(iii) An abuse of authority relating to a Federal contract;

(iv) A substantial and specific danger to public health or safety; or

(v) A violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract).

(2) A reprisal is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(b) Entities to whom disclosure may be made.

(1) A Member of Congress or a representative of a committee of Congress.

(2) An Inspector General.

(3) The Government Accountability Office.

(4) A Federal employee responsible for contract oversight or management at the relevant agency.

(5) An authorized official of the Department of Justice or other law enforcement agency.

(6) A court or grand jury.

(7) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(c) An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Federal contract shall be deemed to have made a disclosure.

6. Amend section 3.904 by revising the section to read as follows:

3.904 Complaints.

7. Add section 3.904-1 to read as follows:

3.904-1 Procedures for filing complaints.

A contractor or subcontractor employee who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 3.903 may submit a complaint with the Inspector General of the agency concerned. Procedures for submitting fraud, waste, abuse, and whistleblower complaints are generally accessible on agency Office of Inspector General Hotline or Whistleblower Internet sites or the complainant may directly contact the cognizant Office of the Inspector General for submission instructions. A complaint by the employee may not be

brought under 41 U.S.C. 4712 more than three years after the date on which the alleged reprisal took place.

8. Add section 3.904-2 to read as follows:

3.904-2 Procedures for investigating complaints.

(a) Investigation of complaints will be in accordance with 41 U.S.C. 4712(b).

(b) Upon completion of the investigation, the head of the agency shall ensure that the Inspector General provides the report of findings to—

(1) The complainant and any person acting on the complainant's behalf;

(2) The contractor and/or subcontractor alleged to have committed the violation; and

(3) The head of the agency.

(c) Unless otherwise provided in agency procedures, the complainant, contractor, and/or subcontractor shall be afforded the opportunity to submit a written response to the report of findings to the head of the agency and the Office of Inspector General.

9. Revise section 3.905 to read as follows:

3.905 Remedies and enforcement of orders.

10. Add section 3.905-1 to read as follows:

3.905-1 Remedies.

(a) Agency response to Inspector General report. Not later than 30 days after receiving a report pursuant to 3.904-2, the head of the agency shall—

(1) Determine whether sufficient basis exists to conclude that the contractor or subcontractor has subjected the employee who submitted the complaint to a reprisal as prohibited by 3.903; and

(2) Either issue an order denying relief or take one or more of the following actions:

(i) Order the contractor or subcontractor to take affirmative action to abate the reprisal.

(ii) Order the contractor or subcontractor to reinstate the complainant-employee to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(iii) Order the contractor or subcontractor to pay the complainant-employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in

connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(b) Complainant's right to go to court.

(1) Paragraph (b) (2) of this section applies if—

(i) The head of the agency issues an order denying relief; or

(ii) (A) The head of the agency has not issued an order—

(1) Within 210 days after the submission of the complaint; or

(2) Within 30 days after the expiration of an extension of time granted in accordance with 41 U.S.C. 4712 (b) (2) (B) for the submission of the report to those stated in 3.904-2 (b); and

(B) There is no showing that such delay is due to the bad faith of the complainant.

(2) If the conditions in either paragraph (b) (1) (i) or (ii) of this section are met—

(i) The complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint; and

(ii) The complainant may bring a de novo action at law or equity against the contractor or subcontractor to seek compensatory damages and other relief available under

41 U.S.C. 4712 in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(A) Such an action shall, at the request of either party to the action, be tried by the court with a jury.

(B) An action under this authority may not be brought more than two years after the date on which remedies are deemed to have been exhausted.

(c) Admissibility in evidence. An Inspector General determination and an agency head order denying relief under this section shall be admissible in evidence in any de novo action at law or equity brought pursuant to 41 U.S.C. 4712.

(d) No waiver. The rights and remedies provided for in 41 U.S.C. 4712 may not be waived by any agreement, policy, form, or condition of employment.

11. Add section 3.905-2 to read as follows:

3.905-2 Enforcement of orders.

(a) Whenever a contractor or subcontractor fails to comply with an order issued under 3.905-1(a)(2), the head of the agency concerned shall file an action for enforcement of the order in the U.S. district court for a district in which the reprisal was found to have occurred. In any action brought pursuant to this authority, the court

may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorney fees and costs. The complainant-employee upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(b) Any person adversely affected or aggrieved by an order issued under 3.905-1(a)(2) may obtain review of the order's conformance with 41 U.S.C. 4712 and its implementing regulations, in the U.S. court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Filing such an appeal shall not act to stay the enforcement of the order of the head of an agency, unless a stay is specifically entered by the court.

12. Revise section 3.906 to read as follows:

3.906 Contract clause.

(a) Except as provided in paragraph (b) of this section, the contracting officer shall insert the clause at 52.203-17, Contractor Employee Whistleblower Rights, in all solicitations and contracts that exceed the simplified acquisition threshold.

(b) The clause prescription in paragraph (a) of this section does not apply to solicitations and contracts of

DoD, NASA, the Coast Guard, or applicable elements of the intelligence community (see 3.900(a)).

3.907-7 [Amended]

13. Amend section 3.907-7 by removing "Reinvestment Act of 2009 in" and adding "Reinvestment Act of 2009, in" in its place.

3.908 [Removed and reserved]

14. Remove and reserve section 3.908.

3.908-1 through 3.908-9 [Removed]

15. Remove sections 3.908-1 through 3.908-9.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205-47 [Amended]

16. Amend section 31.205-47 by—

a. In paragraph (a), in the definition of "Costs" by removing "or others retained by the contractor to assist it;" and adding "or others retained by the contractor or subcontractor to assist it;" in its place;

b. In the introductory text of paragraph (b), by removing "law or regulation by the contractor" and adding "law or regulation by the contractor or subcontractor" in its place;

c. In paragraph (b)(2) by removing "either a finding of contractor liability" and adding "either a

finding of contractor or subcontractor liability" in its place;

d. In paragraph (b)(3)(i), by removing "the contractor;" and adding "the contractor or subcontractor;" in its place;

e. In paragraph (c)(1), by removing "between the contractor" and adding "between the contractor or subcontractor" in its place;

f. In paragraph (c)(2)(i), by removing "incurred by the contractor" and adding "incurred by the contractor or subcontractor" in its place;

g. In paragraph (d)(1) by removing "Federal contract; or" and adding "Federal contract or subcontract; or" in its place;

h. In the introductory paragraph of paragraph (f) by removing "connection with" and adding "connection with the following" in its place;

i. In paragraph (f)(4) by removing "the contractor under" and adding "the contractor or subcontractor under" in its place; and removing "the contractor was" and adding "the contractor or subcontractor was" in its place;

j. In the introductory paragraph of paragraph (f)(5) by removing "contractors arising from either" and

adding "contractors or subcontractors arising from either—" in its place;

k. In paragraph (f)(5)(i) by removing "an agreement" and adding "An agreement" in its place;

l. In paragraph (f)(5)(ii) by removing "dual sourcing" and adding "Dual sourcing" and removing "except when" and adding "except when—" in its place;

m. In paragraph (f)(5)(ii)(A) by removing "incurred as" and adding "Incurred as", removing "contract or" and adding "contract or subcontract, or" in its place, and removing "contracting officer, or" and adding "contracting officer; or" in its place;

n. In paragraph (f)(5)(ii)(B) by removing "when agreed" and adding "When agreed" in its place;

o. In paragraph (f)(6) by removing "contract." and adding "contract or subcontract." in its place;

p. In paragraph (f)(7) by removing "the contractor is" and adding "the contractor or subcontractor is" in its place;

q. In paragraph (g) by removing "contractor separately." and adding "contractor or subcontractor separately." in its place, and removing "contractor to repay all" and adding "contractor or subcontractor to repay all" in its place.

17. Amend section 31.603 by revising paragraph
(b)(15) to read as follows:

31.603 Requirements.

* * * * *

(b) * * *

(15) Unless any of the exceptions at 31.205-47(c)
or (d) apply, costs incurred by a contractor or
subcontractor in connection with any criminal, civil, or
administrative proceedings that result in dispositions
described at 31.205-47(b)(1) through (5) commenced by: a
Federal, State, local, or foreign government, for a
violation of, or failure to comply with, law or regulation
by the contractor or subcontractor (including its agents or
employees); a contractor or subcontractor employee
submitting a whistleblower complaint of reprisal in
accordance with 41 U.S.C. 4712 or 10 U.S.C. 2409; or a
third party in the name of the United States under the
False Claims Act, 31 U.S.C. 3730. For any such proceeding
that does not result in a disposition described at 31.205-
47(b)(1) through (5), or to which 31.205-47(c) exceptions
apply, the cost of that proceeding shall be subject to the
limitations in 31.205-47(e).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Amend section 52.203-17 by—

- a. Revising the section heading;
- b. Removing from the introductory text "3.908-9" and adding "3.906" in its place;
- c. Revising the date of the clause; and
- d. Revising paragraphs (a) and (b) to read as follows:

52.203-17 Contractor Employee Whistleblower Rights.

* * * * *

CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS (DATE)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies established at 41 U.S.C. 4712 and FAR 3.901 through 3.905.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in FAR 3.901 through 3.905.

* * * * *

19. Amend section 52.212-4 by revising the date of the clause; and removing from paragraph (r) "41 U.S.C. 4712 and". The revised text reads as follows:

52.212-4 Contract Terms and Conditions—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (DATE)

* * * * *

20. Amend section 52.212-5 by:

- a. Revising the date of the clause;
- b. Redesignating paragraphs (b)(4) through (60) as paragraphs (b)(5) through (61), respectively;
- c. Adding a new paragraph (b)(4);
- d. Redesignating paragraphs (e)(1)(ii) through (xxii) as paragraphs (e)(1)(iii) through (xxiii), respectively;
- e. Adding a new paragraph (e)(1)(ii);
- f. Revising the date of Alternate II;
- g. Redesignating paragraphs of Alternate II; (e)(1)(ii)(C) through (T) as paragraphs (e)(1)(ii)(D) through (U), respectively; and
- h. Adding a new paragraph (e)(1)(ii)(C).

The revised and added text reads as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE
ORDERS—COMMERCIAL ITEMS (DATE)

* * * * *

(b) * * *

___(4) 52.203-17, Contractor Employee Whistleblower
Rights (DATE) (41 U.S.C. 4712)

* * * * *

(e)(1) * * *

(ii) 52.203-17, Contractor Employee
Whistleblower Rights (DATE) (41 U.S.C. 4712)

* * * * *

Alternate II (DATE). * * *

* * * * *

(e)(1) * * *

(ii) * * *

(C) 52.203-17, Contractor Employee
Whistleblower Rights (DATE) (41 U.S.C. 4712)

* * * * *

21. Amend section 52.213-4 by revising the date of
the clause and paragraph (a)(2)(viii) to read as follows:

**52.213-4 Terms and Conditions—Simplified Acquisitions
(Other Than Commercial Items).**

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL
ITEMS) (DATE)

(a) * * *

(2) * * *

(viii) 52.244-6, Subcontracts for Commercial
Items (DATE).

* * * * *

22. Amend section 52.244-6 by-

- a. Revising the date of the clause;
- b. Redesignating paragraphs (c)(1)(iii) through
(c)(1)(xix) as paragraphs (c)(1)(iv) through (c)(1)(xx),
respectively;
- c. Adding a new paragraph (c)(1)(iii).

The revised and added text reads as follows:

52.244-6 Subcontracts for Commercial Items.

* * * * *

SUBCONTRACTS FOR COMMERCIAL ITEMS (DATE)

* * * * *

(c)(1) * * *

(iii) 52.203-17, Contractor Employee
Whistleblower Rights (DATE) (41 U.S.C. 4712) relating to
whistleblower protections, if the subcontract is over the
simplified acquisition threshold; this clause does not
apply to contracts of DoD, NASA, the Coast Guard, or
applicable elements of the intelligence community-see FAR
3.900(a).

* * * * *

Billing Code: 6820-EP

